

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
VS.	)	CRIMINAL NO.: 03-29 Erie
)	
COREY D. ROSENDARY,)	
)	
DEFENDANT.)	
)	
)	
)	
	)	TYPE OF PLEADING:
)	
	)	MOTION FOR LEAVE TO
	)	FILE AN AMENDED PETITION
	)	PURSUANT TO TITLE 28, UNITED
	)	STATES CODE, SECTION 2255
)	
	)	FILED ON BEHALF OF:
)	
	)	COREY D. ROSENDARY
)	
	)	DEFENDANT
)	
	)	ATTORNEY OF RECORD:
)	
	)	ADAM B. COGAN, ESQUIRE
	)	PA I.D. NO.: 75654
)	
	)	ONE NORTHGATE SQUARE
	)	GREENSBURG, PA 15601
)	
	)	[724] 837-9046
)	
)	
)	
)	
)	

Exhibit B (1)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
VS.	)	CRIMINAL NO.: 03-29 Erie
)	
COREY D. ROSENDARY,)	
)	
DEFENDANT.)	
)	

**MOTION FOR LEAVE TO FILE AN AMENDED PETITION PURSUANT TO
TITLE 28, UNITED STATES CODE, SECTION 2255**

AND NOW, comes the Petitioner, COREY D. ROSENDARY, by counsel, ADAM B. COGAN, ESQUIRE, and respectfully moves this Honorable Court for leave to file an Amended Petition Pursuant to Title 28, United States Code, Section 2255. In support thereof, the Petitioner respectfully avers as follows:

1. On or about November 30, 2006, the Petitioner [hereinafter Rosendary] filed a pro se petition pursuant to Title 28, United States Code, Section 2255 challenging the judgment of conviction and sentence entered against him on August 10, 2004, by the United States District Court for the Western District of Pennsylvania, Erie Division.
2. By Order dated December 22, 2006, this Honorable Court appointed undersigned counsel to represent the Petitioner in connection with this matter.
3. Upon a review of the Petitioner's pro se petition and a review of the entire record, it is believed and therefore averred that amendment of the

Petitioner's pro se petition is required. Specifically, undersigned counsel believes and therefore avers that specific grounds of the denial of Rosendary's right to the effective assistance of counsel pursuant to the Sixth Amendment to the United States Constitution exist that are not specifically laid out in the Petitioner's pro se petition.

4. The specific instances in which Rosendary's right to the effective assistance of counsel were denied are detailed in Rosendary's Amended Petition Pursuant to Title 28, United States Code, Section 2255. That Petition is respectfully incorporated herein by reference.

5. Rule 15 of the Federal Rules of Civil Procedure provides that leave of court to file an amended petition should be granted freely when justice so requires. Specifically, Rule 15 of the Federal Rules of Civil Procedure states:

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders. (Emphasis added)

6. Leave of court so as to permit amendment to a pro se petition such as Rosendary's should be freely given consistent with the literal language of Rule 15 of the Federal Rules of Civil Procedure. See, United States v. Thomas, 221

F.3d 430 (3rd Cir. 2000); Henderson v. DiGuglielmo, 138 Fed. Appx. 463 (3rd Cir. 2005); United States v. Harris, 125 Fed. Appx. 458 (3rd Cir. 2005). Indeed, pro se petitions are to be construed liberally. See, Haines v. Kerner, 404 U.S. 519, 520 (1972); United States v. Garth, 188 F.3d 99, 108 (3rd Cir. 1999) (pro se § 2255 motion construed liberally to avoid procedural bar); United States v. Mora, 293 F.3d 1213, 1218 (10th Cir. 2002)(general rule requiring liberal construction of pro se pleadings applied to §2255 motion).

7. It is respectfully submitted that justice requires amendment to Rosendary's pro se petition pursuant to Title 28, United States Code, Section 2255 as submitted in Rosendary's Amended Petition.

8. While the United States moved to dismiss Rosendary's pro se petition claiming that it was not filed with one year of his conviction becoming final and thus was not timely filed, Rosendary's original petition was timely and to the extent that leave of court is extended to file the Amended Petition, the Amended Petition would likewise be timely filed.

9. The United States will further not be prejudiced by permitting Rosendary to file an amended petition as contemplated herein as Rosendary does not seek through permission for leave to amend to frustrate the one year time bar for the filing of habeas corpus petitions pursuant to Title 28, U.S.C., Section 2255.

10. Rosendary was sentenced on August 10, 2004, and Rosendary timely appealed the judgment of sentence. The United States Court of Appeals for the Third Circuit rejected Rosendary's appeal by Order dated May 13, 2005.

See Exhibit A, a copy of the Third Circuit's docket entries. Rosendary subsequently filed a pro se application for the issuance of a writ of certiorari with the United States Supreme Court on June 28, 2005, which was denied by Order of the United States Supreme Court on October 11, 2005.

11. Critically, Rosendary then timely filed a petition for rehearing with the United States Supreme Court on November 5, 2005, in accordance with Rule 44 of the Rules of the United States Supreme Court and rehearing was not denied by the United States Supreme Court until February 21, 2006. See, Exhibit B, a copy of the United States Supreme Court's docket entries.

12. A timely filed petition for rehearing in accordance with the established rules of court stops the time for the filing of a petition for a writ of certiorari from running as the judgment does not then become final until the petition for rehearing is denied. See, United States v. Wall, 456 F.3d 316 (3rd Cir. 2006); Hibbs v. Winn, 542 U.S. 88 (2004); Missouri v. Jenkins, 495 U.S. 33 (1990) ("A timely petition for rehearing operates to suspend the finality of the court's judgment, pending the court's further determination whether the judgment should be modified so as to alter its adjudication of the rights of the parties.").

13. Rosendary's conviction thus did not become final until February 21, 2006, and, therefore, he had/has until February 21, 2007, to file a timely amended petition pursuant to Title 28, U.S.C., Section 2255.

WHEREFORE, the Petitioner/Petitioner respectfully requests leave to file
his amended Petition pursuant to Title 28, United States Code, Section 2255.

RESPECTFULLY REQUESTED,

s/Adam B. Cogan,
ADAM B. COGAN, ESQUIRE
PA I.D. NO.: 75654

ATTORNEY FOR THE PETITIONER

USCA3 Docket Sheet for 04-3394

Page 1 of 0

General Docket
US Court of Appeals for the Third Circuit

Court of Appeals Docket #: 04-3394
Nsuit: 0
USA v. Rosendary
Appeal from: United States District Court for the Western Di

Lower court information:

District: 0315-1 : 03-cr-00029E
Trial Judge: Sean J. McLaughlin, District Judge
Court Reporter: Ronald Bench, Court Reporter
Date Filed: 7/8/03
Date order/judgment: 8/12/04
Date NOA filed: 8/18/04

Fee status: Appoint Cont. fr DC

Prior cases:

None

Current cases:

None

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04-3394 USA v. Rosendary

UNITED STATES OF AMERICA
Appellee

Bonnie R. Schlueter
FAX 412-644-4549
412-894-7414

<http://pacer.ca3.uscourts.gov/cgi-bin/dktprt.pl?CASENUM=04-3394&puid=01168452389> 1/10/2007

Exhibit A (1)

Exhibit B (7)

USCA3 Docket Sheet for 04-3394

Page 2 of 6

[COR NTC gvt]
Paul M. Thompson
FAX 412-644-4549
412-894-7429
[COR NTC gvt]
Office of United States
Attorney
700 Grant Street
Suite 400
Pittsburgh, PA 15219

v.

COREY D. ROSENDARY
Appellant

Michael Hadley
FAX 814-677-7083
814-676-3330
[COR NTC dcj]
One Drake Drive
Oil City, PA 16301

Docket as of March 4, 2006 6:02 pm

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04-3394 USA v. Rosendary
UNITED STATES OF AMERICA
Appellee

v.

COREY D. ROSENDARY
Appellant

Docket as of March 4, 2006 6:02 pm

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<http://pacer.ca3.uscourts.gov/cgi-bin/dktrpt.pl?CASENUM=04-3394&puid=01168452389> 1/10/2007

Exhibit A (2)

Exhibit B (8)

USCA3 Docket Sheet for 04-3394

04-3394 USA v. Rosendary

8/23/04 Criminal Case Docketed. Notice filed by Co Rosendary. (dmm)

8/23/04 ORDER appointing Michael R. Hadley, Esq. as represent Appellant, filed. (dmm)

9/2/04 APPEARANCE from Attorney Bonnie R. Schluete Appellee USA, filed. (dmm)

9/2/04 TRANSCRIPT PURCHASE ORDER (Part I), orderin of the proceedings, filed. (dmm)

9/2/04 ORDER to Ronald Bench directing transcript, 8/30/04, to be filed by 10/4/04, filed. (dm)

9/2/04 TRANSCRIPT PURCHASE ORDER (Part II) filed b filed. (dmm)

9/2/04 APPEARANCE from Attorney Michael Hadley on Appellant Corey D. Rosendary, filed. (dmm)

9/2/04 INFORMATION STATEMENT on behalf of Appellan Rosendary, received. (dmm)

9/20/04 TRANSCRIPT PURCHASE ORDER (Part III) notify by Ronald Bench filed in D.C., filed. (dmm)

9/20/04 BRIEFING NOTICE ISSUED. Appellant brief and 10/20/04. (dmm)

10/20/04 CERTIFIED LIST, filed. (dmm)

10/20/04 BRIEF/APPENDIX on behalf of Appellant Corey Copies: 10, Pages: 22, delivered by mail, f Certificate of service date 10/20/04. (lal)

<http://pacer.ca3.uscourts.gov/cgi-bin/dktrpt.pl?CASENUM=04-3394&puid=01168452389> 1/10/2007

Exhibit A (3)**Exhibit B (9)**

USCA3 Docket sheet for 04-3394

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10/22/04 PRESENTENCE REPORT (4 ccs) received. ZZ#(UN
ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL (lal)

10/25/04 APPEARANCE from Attorney Paul M. Thompson o
Appellee USA; filed. (dmm)

10/28/04 MOTION filed by Michael Hadley for dkt-04-3
Corey D. Rosendary for approval of interim
filed. Answer due , Certificate of Service

11/10/04 CJA 20 approved by Judge Julio M. Fuentes,
for compensation and expenses totaling \$ 1,
(jht)

11/15/04 BRIEF and SUPPLEMENTAL APPENDIX on behalf o
Copies: 10, Pages: 28, Word Count: Under 14
by mail, filed. Certificate of service date

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04-3394 USA v. Rosendary

11/22/04 ORDER (Fuentes, Authoring Judge) is granted
of one half of the \$3,700.00 limit for comp
expenses, filed. (jht)

2/24/05 Parties directed to comment on applicabilit

3/7/05 RESPONSE by Appellant to Court's order of 2
Boker applicability, filed. Certificate of
3/3/05. (lwc)

3/9/05 CALENDARED for Wednesday, May 4, 2005 in Pi
(mac)

3/14/05 RESPONSE filed by Appellee USA to Court's O
regarding the applicability of ZZ U.S. ZZ_v
Certificate of Service dated 3/10/05. (dmm)

<http://pacer.ca3.uscourts.gov/cgi-bin/dktprt.pl?CASENUM=04-3394&puid=01168452389> 1/10/2007

Exhibit A (4)

Exhibit B (10)

USCA3 Docket Sheet 04-3394

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5/4/05 SUBMITTED Wednesday, May 4, 2005 Coram: McK Antwerpen and Weis, Circuit Judges. (mac)

5/13/05 ORDER (McKee, Van Antwerpen and Weis, Autho Circuit Judges) denying appellant's motion remand. The motion of the Government to dis in its letter response and brief is granted is dismissed because appellant waived his r ZZ_United ZZ_States ZZ_v. ZZ_Khattak, 273 F Cir. 2001), filed. (dmm)

5/13/05 Certified copy of order to Lower Court. (dm

5/17/05 RECORD released. (dmm)

7/1/05 CJA 20 voucher no. 050707000008 approved by Weis, Circuit Judge for compensation and ex \$ 675.00. [FFW] (jht)

7/29/05 MOTION filed by Michael Hadley, Esq., couns Corey D. Rosendary, requesting reconsiderat petition, filed. (jht)

8/17/05 CJA 20 voucher no. 050817000007 approved by Fuentes, Circuit Judge for compensation and totaling \$ 922.00. [FFW] (jht)

8/17/05 ORDER (Fuentes, Authoring Judge) granting c for reconsideration of fee petition, filed.

9/15/05 Supreme Court of U.S. notice filed advising writ of certiorari filed by Appellant Corey Filed in the Supreme Court on 6/28/05 at Su number: 05-6205. (jht)

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Exhibit A (5)**Exhibit B (11)**

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04-3394 USA v. Rosendary

10/17/05 U.S. Supreme Court order dated 10/11/05, at 05-6205, denying petition for writ of certiorari. Appellant Corey D. Rosendary, filed. (jht)

3/1/06 U.S. Supreme Court order dated 2/21/06, at 05-6205, denying the petition for rehearing. Appellant Corey D. Rosendary, filed. (ghb)

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PACER Service Center			
Transaction Receipt			
01/10/2007		13:19:23	
PACER Login:	cj0737	Client Code:	rosendary
Description:	ukt report	Case Number:	04-3394
Billable Pages:	6	Cost:	0.48

<http://pacer.ca3.uscourts.gov/cgi-bin/dktrpt.pl?CASENUM=04-3394&puid=01168452389> 1/10/2007

Exhibit A (6)**Exhibit B (12)**

Docket for 05-6205

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No. 05-6205

Title: Corey D. Rosendary, Petitioner
v.

United States

Docketed: September 9, 2005

Lower Ct: United States Court of Appeals for the Third Circuit

Case Nos.: (04-3394)

Decision Date: May 13, 2005

~~~~Date~~~~	~~~~Proceedings and Orders~~~~
Jun 28 2005	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due October 11, 2005)
Sep 14 2005	Waiver of right of respondent United States to respond filed.
Sep 22 2005	DISTRIBUTED for Conference of October 7, 2005.
Oct 11 2005	Petition DENIED.
Nov 5 2005	Petition for Rehearing filed.
Jan 18 2006	DISTRIBUTED for Conference of February 17, 2006.
Feb 21 2006	Rehearing DENIED.

~~~~Name~~~~	~~~~Address~~~~
Attorneys for Petitioner:	
Corey D. Rosendary	20162-068
Counsel of Record	FCI Allenwood Medium
	PO Box 2000
	White Deer, PA 17887
Party name: Corey D. Rosendary	
Attorneys for Respondent:	
Paul D. Clement	Solicitor General
Counsel of Record	United States Department of Justice

<http://www.supremecourtus.gov/docket/05-6205.htm>

1/10/2007

Exhibit B (1)**Exhibit B (13)**

Docket for 05-6205

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950 Pennsylvania Avenue, N.W.
Room 5614
Washington, DC 20530-0001

Party name: United States

<http://www.supremecourtus.gov/docket/05-6205.htm>

1/10/2007

Exhibit B (2)

Exhibit B (14)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
VS.	)	CRIMINAL NO.: 03-29 Erie
)	
COREY D. ROSENDARY,)	
)	
DEFENDANT.)	
)	

ORDER OF COURT

AND NOW, to-wit, this _____ day of February, 2007, upon consideration of the Defendant's **MOTION FOR LEAVE TO FILE AN AMENDED PETITION PURSUANT TO TITLE 28, UNITED STATES CODE, SECTION 2255**, it is hereby **ORDERED** that said motion is hereby **GRANTED**.

BY THE COURT,

_____, J.
THE HONORABLE SEAN MCLAUGHLIN

Exhibit B (15)